MBELDEF

Minority Business Enterprise Legal Defense and Education Fund, Inc.

Parren J. Mitchell
Founder and Chairman

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President

May 17, 1995

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable William Caton
Secretary
Federal Communications Commission
1919 M Street, Northwest
Room 814
Washington, D.C. 20554

Re: Comments on MM Docket Nos 94-149 and 91-140
Notice of Proposed Rulemaking

Dear Mr. Caton:

The Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF) is a non-profit organization founded by former Maryland Congressman Parren J. Mitchell which serves as a national advocate and legal representative for the minority business community. In the past, we have offered comments to the Federal Communications Commission in PP Docket No. 93-253. Additionally, on December 14, 1994, MBELDEF along with twelve other organizations directed a letter to Chairman Reed Hundt concerning competitive bidding rules for certain broadband Personal Communications Systems (PCS) licenses/spectrum blocks, and related matters. Included in that letter was an acknowledgement that the FCC was making positive statements encouraging minority ownership.

With respect to the Mass Media Docket noted above, the following organizations (noted alphabetically) offer the following comments:

Communications Task Force

Mexican American Legal Defense and Education Fund (MALDEF)

Minority Business Enterprise Legal Defense and Education Fund (MBELDEF)

National Association of Minorities in Cable (NAMIC)

National Bar Association (NBA)

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Introduction

The Federal Communications Commission initiated this docket for the purpose of exploring ways to provide minorities and women with greater opportunities to enter the mass media industry. The FCC stated that special attention would be focused upon the broadcast, cable, wireless cable and low power television services. The FCC in its Notice of Proposed Rulemaking released on January 12, 1995 stated that comments were invited concerning the modification of existing mechanisms designed to assist minorities as well as ideas relating to the development of new initiatives.

We have noted previous expressions made by members of the FCC on the topic of minority ownership, especially that of Chairman Reed E. Hundt in his Separate Statement Re: Implementation of Section 309 (j) of the Communications Act--Competitive Bidding (PP Docket No. 93-253. Although his comments related to Designated Entities (DEs), they remain relevant in matters relating to minority business ownership in mass media. In that Statement, he said, "...it is particularly important that we use our substantial enforcement powers to the fullest extent to ensure that women, minority, and small businesses who win DE licenses control those licenses.... As Chairman of the Commission, I will not tolerate abuses of our measures to assist designated entities...."

A Staff Paper produced by the National Telecommunications and Information Administration (NTIA) in April, 1995, referenced a 1991 study developed for the United States Department of Commerce Minority Business Development Agency. It stated at page three of the NTIA Report that less than one percent (1%) of all telecommunications companies, including telephone related and mass media firms, were minority owned. Capital was cited as the most significant barrier to minority business ownership in telecommunications.

The organizations noted in this letter firmly believe that desegregation of the marketplace (ownership) is the final frontier of the struggle for civil rights in this country. Furthermore, we wish to emphasize that we encourage the FCC to be increasingly vigilant in its attempts to halt and remedy proven discriminatory practices in the mass media industry. As set forth in Section 5 of the Fourteenth Amendment of the United States Constitution, a legitimate injury requires a bona fide remedy.

We have noted in the past that there is a well orchestrated and sometimes mean-spirited campaign, particularly in the broadcast media which is attacking government programs designed to remedy past and present discrimination. Similarly, many persons in elected government have cast doubts about the efficacy of race and gender specific programs. The regulatory environment at the FCC should not be affected by such rhetoric for the following reasons:

a. The objective of race-specific programs is to remedy existing discrimination as well as the effects of past discrimination. To state that minorities are being given an "unfair advantage" is a "red herring". For example, in Paragraph 5 of the Notice of Proposed Rule Making, the FCC acknowledged that 2.9% of commercial radio and television stations on the air were controlled by minorities. Do the opponents of race-specific programs suggest that 97.1% of that market is not enough?

b. Race specific programs give no more than a preference to qualified victims of racial discrimination. The objective is to provide a better opportunity to perform and demonstrate their capabilities. The record of past FCC activity reflects numerous preferences granted to special interests unrelated to race.

c. Race-specific programs do not constitute discrimination against white people. Rather, they provide an opportunity for <u>qualified</u> minorities to help themselves overcome the effects of racial discrimination by working and earning a living through job performance or contract performance. The only difference between the past and the present is that since race-specific remedies were enacted, majority companies have had to share with minorities some of those opportunities that previously had been enjoyed <u>exclusively</u> by whites.

Upon consideration of the apparent mood of Congress, the FCC must be ever vigilant in maintaining its commitment to civil rights. It should enact no rule, revise no rule, and repeal no rule without first making an affirmative finding, supported by hard research that such action will not diminish opportunities for minority ownership and employment. The Office of Communications Business Opportunity should be given the authority to comment on all potential changes to existing rules and policies.

We have supported past efforts by the FCC to encourage such diversity; more initiatives are required, especially with respect to increasing minority business' access to capital. True diversity can become a reality through such concentrated and unceasing efforts.

<u>Lack of Access to Capital:</u>
<u>A Barrier to Market Entry for Minority Telecommunications Firms</u>

The aforementioned NTIA report at page 23 examined broadcasting, one extremely visible segment of mass media. From 1991 to 1993, NTIA's Minority Telecommunications Development Program (MTDP) compiled annual listings of broadcast stations owned by Black, Hispanic, Asian, and Native Americans. The data showed that in 1993, minorities owned only 3.5% of all AM stations in the United States, 2.0% of all FM stations, and 2.3% of all TV stations. Furthermore, the total number of minority owned stations fell from 310 in 1992, to 300 in 1993, while total stations increased from 10,834 to 11,021 stations.

The broadcasting industry illustrates the problem at hand. The primary root of the problem is the inadequate access to capital for minority firms.

We have determined over the years that on the state and local level, access to capital (in addition to access to bonding) is the primary impediment to minority business development. In this regard, we have observed a number of studies performed for many jurisdictions across the country in their efforts to comply with City of Richmond v. J. A. Croson, 488 U.S. 469 (1989). The following are some of the findings. Although the documents cited are in the public domain, we believe that it is more illustrative to indicate the sectors of the country in which the cited cities are located. Of course, the anecdotes cited relate to businesspersons in general, not telecommunications professionals. However, we strongly assert that the experiences noted below reflect the financial climate with respect to capital markets for telecommunications companies.

City A (Western United States)

a. A local Black MBE owner indicated that she was told that a local bank was lending to small businesses. She was interested in borrowing $50,000 and had a financial statement which reflected $600,000 in assets. She had no repossessions or bankruptcies with two leased vehicles and a good credit rating. Her loan application, however, was denied. She was told by bank representatives that they were only financing "gold accounts". She has since been informed by a friend, who is a white female, that she always has her brother deal with banks because he is a white male and is almost always successful in dealing with the banks.

b. A local WBE owner reported that financing is much more difficult for a woman to get because of the discrimination and stereotypical attitudes that women in business face. She explained that she has not had this problem since she has joint ventured with a white male and she realizes that without him, she would not have been able to get the requisite financing.

c. A local Hispanic MBE owner and community activist reported that for years there were no banks in the black community. Business loans to minority companies located in certain neighborhoods were difficult to obtain. He explained that "redlining" has been common for years and added that it has been only in the last few months that bank branches have opened up in the black community. He finally stated that, in his opinion, these changes would not have occurred without the force of law.

d. A Native American female (MBE) in the construction industry reported that her firm was unable to secure a loan even with over a half million dollars in accounts receivables.

City B (Southern United States)

a. A Native American and female business (MBE) owner states that within three months of her takeover of a previously male owned company, the bank terminated its credit even though the firm was one of the bank's first commercial accounts established at the bank's inception and was healthy.

b. A partner in a black owned engineering firm (MBE) stated that his firm has always been undercapitalized and at present is in need of additional working capital. The firm found itself unable to obtain a purchase money mortgage for an improved property valued at $168,000. The lenders considered the property itself to be insufficient collateral. They wanted the partners' personal guarantees as well. Similarly situated majority business owners were rarely asked to provide such personal guarantees.

c. A black engineering firm (MBE) reports that, although it had little difficulty obtaining an initial signature loan of $50,000, the firm experienced great difficulty obtaining additional financing. The terms offered by the local banks have been unreasonable. For example, one bank offered an $88,000 line of credit--but only if the firm posted an equivalent amount in CDs as collateral. Moreover, the firm cannot obtain self-collateralizing equipment loans. The bank's use of debt-to-worth ratios is an excuse not to offer financing, the firm believes.

City C (Eastern United States)

a. Forty firms responded to a survey question regarding size of the last commercial loan received. For all respondent firms, the average size loan was $119,630. The average size loan for white males was $416,667. For women and blacks, those figures were $79,594 and $55,746 respectively.

b. Black owned firms exhibited the greatest difficulty on obtaining commercial loans. Of the Black firms that applied for loans, only 44% had their loans approved, compared to 75% for nonminority firms, 75% for women owned firms, and 50% for Hispanic owned firms.

Timothy Bates in his book entitled Banking on Black Enterprise agrees that the major constraint on the formation, growth, and diversification of Black business has been inadequate capitalization. Black entrepreneurs' low holdings of personal wealth, combined with discriminatory treatment by commercial banks, have meant continuing obstacles. The anecdotes cited concerning the cities noted above reflect this as well.

In another writing produced by Mr. Bates for the Center for Economic Studies, United States Bureau of the Census in 1993, he emphasizes that when formulating strategies to address the problems presented by minorities' lack of access to capital, the development of new ideas and initiatives is a necessity. "One size does not fit all". Indeed, the organizations signing this letter agree that the process of developing effective strategies to combat this problem is a dynamic one requiring ever-vigilant innovation.

True diversity of ownership promotes diversity of program service. The empirical research findings cited in _Metro Broadcasting v. FCC_, 497 U.S. 547 (1990) demonstrate the relationship between minority ownership and program diversity. Minority ownership policies are designed to promote capital availability and, consequently, to promote competition in the marketplace.

The Development of Incubator Programs and Similar Endeavors Should be Encouraged

The encouragement of diversity in the marketplace is a sound business practice. It is good for America. In the March 19, 1995 edition of the Washington Post, Mobil Corporation Chairman Lucio A. Noto said, "I have never felt a burden from affirmative action because it is a business imperative for us". He added that it helps the Fairfax-based oil company attract the talent it needs for the future. Further in that same article, Marcy Romm, senior vice president for human resources at ICF Kaiser International, Inc said, "It is extremely important to the company that we be diverse...We are looking purely at the business issue...."

Properly constructed, any program encouraging majority businesses to participate in efforts to develop diversity in the marketplace becomes beneficial for all parties involved. The individuals noted above recognize this fact. These same principles apply to FCC matters.

We support the FCC's efforts through owner-based incentives to encourage mass media entities to create incubator programs. The FCC should provide appropriate incentives for those majority companies in the broadcast industry to engage in the following activity:

*Provide prospective minority broadcasters and cable operators with low-interest loans and loan guarantees

*Provide management and technical assistance to such companies including mentoring, on-the-job training, joint ventures, and various educational programs including business planning and training

*Provide an appropriate environment for majority broadcasters to share their talent, experience and financial resources

A touchstone principle should be that the ultimate goal of this program is to help minority telecommunications firms develop so that they will be able to more fully participate in future FCC endeavors. Once their corporate profiles reflect appropriate substantive training and experience, they may become more attractive to capital markets.

We believe that a "mentor" should incubate at least two minority firms for every additional facility it is permitted to acquire over the ownership limits. The mentor should demonstrate that any proposed acquisition will not adversely impact upon minority ownership

Generally, mentoring programs have been very successful in other fields of endeavor. Properly modified, mentoring programs can work in telecommunications. Although differences exist from program to program ("One size does not fit all"), the concept creates opportunities for a minority participant to "shadow" the majority company until certain skills and techniques are learned and developed. Mentoring programs may prove successful in gaining long term results with respect to the development of minority telecommunications firms, thus making them more attractive to capital markets. Such programs have proven successful and are administered at little extra cost to the mentor or protege (other than the salary of the personnel engaged in "shadowing". When appropriate, the mentor may be able to assist the minority company in obtaining financing. Such activity can lead to future joint ventures where the minority company's participation level can increase with each endeavor.

Reference is made to Paragraph 17 of the Notice of Proposed Rulemaking. We strongly believe that minorities should be the sole beneficiaries of incubator programs. The record does not reflect a history of proven discrimination in capital markets against any group discussed (such as small businesses in general) except for minorities. Thus, it is our position that the Incubator Program should be reserved for minority entrepreneurs.

With any program of this nature, some form of accountability must be in place. Any "sham" activity or any development of a "front" should be swiftly and harshly punished. Proof of the FCC's intent in this regard should be published in order to discourage as many companies as possible from attempting to foil the objectives of the program.

Another program worthy of consideration is one that helps minority firms identify traditional as well as non-traditional sources of funding; furthermore, such a program should help such firms develop strategies relative to the creation of new funding sources. Perhaps the FCC can provide appropriate incentives to majority firms that either provide direct funding or loan guarantees to minority mass media firms.

In addition, the FCC should encourage the formation of a minority mass media "bank" which would be funded by majority mass media companies who have been given appropriate incentives by the FCC to participate. Perhaps the FCC can petition Congress to authorize its creation. Such a "bank" would be a private, non-partisan, and statutorily created institution managed by a "blue ribbon" board of directors. By this method, many funding sources, foreign and domestic, can participate. This bank would provide assistance in four ways:

a. Its investment decisions would include minority ownership as a primary decisional factor, accounting for at least 35% of the capital invested or loans made.

b. Capital flowing through the bank would not be deemed attributable for the purpose of Section 310 (b) (4) of the Act.

c. By its pooling mechanism, the bank would reduce the transaction costs which prevent moderate sized alien capital from being invested in American media.

d. The bank would have the flexibility to take investment positions, make loans or issue loan guarantees.

Conclusion

Accordingly, we formally support the FCC's efforts to help increase minority business' access to capital with respect to mass media. Incubator programs involving innovative approaches to minority business development should be vigorously encouraged.

We do agree that with respect to attribution rules, the FCC should relax them in order to stimulate investment in minority mass media facilities.

Concurrently, we believe that it is prudent for the FCC to seek new authority to issue tax certificates in appropriate situations. The hard facts of the marketplace dictate that majority firms will not engage in such activity without the incentives presented by the recently revoked FCC tax certificate policy.

The FCC must bear in mind that its pre-1978 ratification of state sponsored and state assisted de jure segregation and discrimination helped exclude at least two generations of minorities from broadcasting and cable. In the meantime, existing majority companies were given the benefit of a number of preference programs which have permitted them to become enormous, strong and often hostile to minority business interests.

Please feel free to contact each organization directly if further information is required.

Very truly yours,

Anthony W. Robinson
President

cc: Chairman Reed Hundt
Commissioner Andrew C. Barrett
Commissioner Susan Ness
Commissioner Rachelle B. Chong

APPENDIX

The Organizations noted in this writing can be contacted directly as follows:

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